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SIPDIS

SENSITIVE

STATE FOR WHA/BSC AND INL
STATE PLEASE PASS TO USAID LAC/AA
JUSTICE FOR OPDAT(VAKY/YOUNG), OIA, OCRS
TREASURY FOR OTA
SOUTHCOM FOR POLAD DAN JOHNSON
NSC FOR KIM BREIER

E.O. 12958: N/A

TAGS: [PGOV](#) [PREL](#) [PTER](#) [KJUS](#) [PA](#)

SUBJECT: PARAGUAY'S CRIMINAL PROCEDURE CODE: ITS FLAWS AND OPPORTUNITIES FOR REFORM

1. (SBU) Summary: Following an assessment of the ability of prosecutors and related investigators from the Attorney General's Office to develop and prosecute effective money-laundering and terrorism-financing cases under the existing Paraguayan Criminal Procedure Code (Code), EmbOffs have undertaken focused efforts to advance Code reform. Over the last nine months, the Department of Justice's Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) Resident Legal Advisor (RLA) Scott Thorley and Resident Enforcement Officer (REA) Joe Parker of Treasury's Office of Technical Assistance (OTA) have fostered awareness of the many procedural pitfalls built into the Code. A series of high-profile kidnappings and the resultant public outcry over security has created an opportunity for the Embassy to reinforce the need for Code reform with legislators. Recently, the Embassy sponsored a visit to Puerto Rico by five lead prosecutors from units that prosecute sophisticated or complex economic criminal violations and five judges representing most of the differing strata and functions of the criminal court in Paraguay to observe U.S. judicial proceedings. This visit, as part of a series of training efforts, has yielded a unified view among participants regarding Code modifications needed to build effective cases. Formal changes in the Code will require careful appeals to key legislators to adopt the proper legislation. End Summary.

Assessment and Training Details

2. (SBU) In winter and spring of 2004, RLA reviewed the Criminal Procedure Code to assess its utility for prosecuting money-laundering and terrorism-financing cases. The outlook was disheartening, revealing several flaws, including:

-- A requirement that authorities notify a target and his/her attorney before opening a criminal investigation;

-- The inability to employ modern investigative techniques (including undercover investigations, informants, wiretaps, controlled deliveries, certain types of surveillance without notice, and more);

-- The imposition of excessive and burdensome documentation requirements on prosecutors;

-- A requirement for most investigations to be completed within six months;

-- Excessive focus on an overly complex and burdensome investigation instead of the trial;

-- A requirement that all cases go to trial;

-- The lack of an effective plea-bargaining procedure; and

-- A host of other, more technical but equally troublesome obstacles.

3. (SBU) Key legislation for modification of Paraguay's money-laundering law is still before Congress. However, even when that law is adopted, the flaws in the Code just described could obstruct effective investigations and prosecutions. To plant seeds for the need for criminal procedure reform, RLA and REA undertook a number of initiatives, including:

-- A training conference May 27-29 in Asuncion for 50 prosecutors (including Attorney General Oscar Latorre and most of his Deputy Attorneys General), investigators and judges. Among several capacity-building topics was a full day on pitfalls in the Code and how to work within a flawed system.

-- A detailed review of the Code in August 2004 by an Assistant U.S. Attorney who is an expert in Latin American criminal procedure. He found that Paraguay's Code was

perhaps the most restrictive and unworkable in the hemisphere, but helped us come up with a plan to build awareness and grassroots support for meaningful Code reform.

-- A conference for 50 investigators, prosecutors and judges on the subject of Code reform in November 2004. We filmed the conference with the goal of reaching a wider audience by distributing copies to prosecutor offices throughout Paraguay. Throughout the next year, we plan to visit and review as many of the prosecutor units as possible to review the film's message relating to Code reform and to give other training on effective investigations of economic crimes.

Public Security Concerns Create Reform Opportunities

14. (SBU) In late 2004, a series of high-visibility local kidnappings opened the door to further Embassy input to the legislature on Code reform. In November 2004, key legislators appealed to the Embassy to recommend modifications to the Code that would empower more effective investigations and prosecutions. To meet that request, the Embassy produced a list of basic concepts that should be included in a revision of the Code.

The Procedural Code Debate

15. (SBU) In this connection, a Paraguayan Senate Commission led by Senator Bader Rachid and composed of 12 members was formed to study revision of the Code. The Attorney General's Office and members of the judiciary are prominently featured on the Commission, with each offering a widely divergent view of what should be included in a Code revision. The representatives from the Attorney General's Office developed a draft to rewrite the Code that adopted most of our persistent recommendations for pronounced enabling modifications. Meanwhile the judiciary, advised by a human rights-oriented NGO, the Institute for Comparative Studies of Criminal and Social Sciences (INECIP), argued against substantive changes.

16. (SBU) Faced with this philosophical divide that could have bound up the work of the Commission, RLA organized a visit for a delegation of influential prosecutors and judges to Puerto Rico for the purpose of exposing them to U.S. prosecutions of heads of criminal organizations. The training effort took place March 7-11 in San Juan, Puerto Rico, and included the following:

- Observation of portions of a federal death penalty trial;
- Extended visits with federal magistrate judges;
- Visits with District Court judges;
- Observation of guilty plea and other non-trial proceedings;
- Extended visits with the U.S. Attorney's Office;
- A visit with the Federal Public Defender;
- Observation of proceedings in the Puerto Rico state court system;
- Visits with state judges, and more.

Each of the above visits were accompanied by contextual explanations to help the participants interpret what they were seeing and how the proceedings promoted fairness and efficiency, and also to understand how the system guaranteed the rights of the parties -- perhaps even more deeply than the "guarantista" system to which they are accustomed.

17. (SBU) On March 16, following the participants' return to Paraguay, they held a training "post mortem" regarding procedural reforms that both the judges and the prosecutors could agree on. Surprisingly, there was remarkable unanimity of opinion that major reform -- much closer to that desired by the Attorney General's Office -- should and would be supported. The judges explained their change in perspective based on what they had seen -- a justice system that had addressed and found solutions to many of the ills plaguing Paraguayan justice.

18. (SBU) On March 17, the five participant judges involved in the Puerto Rico training visited for an hour and a half with the President of the Paraguayan Supreme Court, sharing what they had learned about the accusatory system's strong points. The judges reported that President Fretes listened with much interest and stated that, based on trust and previous satisfactory results working on legislation with the Embassy, the judiciary should move toward more extensive Code reform based on what the participant judges had learned.

19. (SBU) Efforts have been, and will continue to be made, to work out differences with INECIP, the official advisors on Code reform to the judiciary. At the root of the

philosophical division over the extent of Code revision may be INECIP's initial authorship of the present Code, and their professed desire to see it changed as little as possible.

10. (SBU) Comment: Our focused efforts with judicial officials on the need for genuine procedural reform have yielded a genuine opportunity for significant modifications. Ultimate success, however, will depend on several factors. First, prosecutors and judges need to work in collaboration to produce a draft text for modifications that will facilitate meaningful reform. Second, Paraguayan legislators must be convinced of the efficacy of this legislation and act to adopt it. This effort will prove challenging. Collaboration between prosecutors and judges does not come naturally. On the other hand, politicians no doubt will inject personal or political considerations that could send this project astray. In the weeks and months ahead, Embassy will strive to keep sights of all players on the ball -- a criminal justice system that functions effectively to facilitate criminal investigations and prosecutions thereby delivering a more just and safe society. End Comment.
KEANE